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FILED
2008 MAR 25 PM 3:32
CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12 UNLIMITED CIVIL JURISDICTION

13 WHITNEY R. LEEMAN, Ph.D.

14 Plaintiff,

15 v.

16 LEGOLAND CALIFORNIA, LLC; and
17 DOES I through 150, inclusive,

18 Defendants.

Case No. 37-2008-00052624-CU-MC-NC

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code §25249.6 et seq.)

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, Ph.D. in the public interest of the citizens of the State of California, to enforce the
4 People's right to be informed of the presence of numerous carcinogenic chemicals known as
5 polycyclic aromatic hydrocarbons found in certain flame-broiled hamburgers sold by defendants in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
8 California citizens about their exposure to various cancer-causing chemicals present in and/or on
9 certain flame-broiled hamburgers sold by defendants to consumers throughout the state of
10 California. These chemicals include: benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,
11 benzo[k]fluoranthene and indeno[1,2,3-cd]pyrene (commonly known as, and hereinafter
12 collectively referred to as, "PAHs").

13 3. PAHs are products of incomplete combustion at high temperatures. High levels of
14 PAHs are commonly found in soot and smoke, including smoke produced when meat is flame-
15 broiled on restaurant broilers.

16 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code §25249.6 *et seq.* (hereinafter "Proposition 65"), "No person in the
18 course of doing business shall knowingly and intentionally expose any individual to a chemical
19 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
20 warning to such individual..." (*Cal. Health & Safety Code §25249.6.*)

21 5. Each of the PAHs is a chemical known to the State of California to cause cancer and
22 is listed as such pursuant to California Health & Safety Code §25249.8(a).

23 6. Defendants sell flame-broiled hamburgers which contain excessive levels of PAHs.
24 Such hamburgers and all other flame-cooked ground beef products shall hereinafter be referred to as
25 the "Flame Cooked Ground Beef Products."

26 7. The PAHs in and/or on the Flame Cooked Ground Beef Products sold by defendants
27 primarily result from the burgers' exposure to smoke contaminated with PAHs – specifically, when
28 fat drips onto a hot flame-broiler, it thereby creates smoke contaminated with PAHs. PAHs may

1 also be produced when flames come into contact with the fat on the surface of the Flame Cooked
2 Ground Beef Products. Either way, PAHs are deposited onto the surfaces of the Flame Cooked
3 Ground Beef Products and remain there through consumption by consumers.

4 8. There are methods available by which ground beef can be flame-broiled without
5 being exposed to excessive amounts of smoke contaminated with carcinogenic PAHs, including
6 methods designed to minimize the amount of fat reaching the flame and the amount of smoke
7 reaching the burgers.

8 9. Defendants' failure to warn consumers about their exposure to PAHs in conjunction
9 with defendants' sale of the Flame Cooked Ground Beef Products is a violation of Proposition 65
10 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
11 violation.

12 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
13 permanent injunctive relief to compel defendant to provide purchasers or users of the Flame Cooked
14 Ground Beef Products with the required warning regarding the health hazards of PAHs, or to reduce
15 the level of generated PAHs to a level deemed safe by the State of California. (*Cal. Health &*
16 *Safety Code §25249.7(a).*)

17 11. Plaintiff also seeks civil penalties against defendants for its violations of Proposition
18 65, as provided for by California Health & Safety Code §25249.7(b).

19 **PARTIES**

20 12. Plaintiff WHITNEY R. LEEMAN, Ph.D. ("PLAINTIFF") is a citizen of the State of
21 California currently residing in Sacramento County who is dedicated to protecting the health of
22 California citizens through the elimination or reduction of toxic exposures from certain food
23 products, and brings this action in the public interest pursuant to California Health & Safety Code
24 §25249.7.

25 13. Defendant LEGOLAND CALIFORNIA, LLC ("LEGOLAND") operates a theme
26 park in Carlsbad, California, and is a person in the course of doing business within the meaning of
27 California Health & Safety Code §25249.11.

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1 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
2 with traditional notions of fair play and substantial justice.

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4 **FIRST CAUSE OF ACTION**
(Violation of Proposition 65)

5 19. Plaintiff realleges and incorporates by reference, as is fully set forth herein,
6 paragraphs 1 through 18, inclusive.

7 20. The citizens of the State of California have expressly stated in Proposition 65 that
8 they must be informed about their exposure to chemicals that cause cancer, birth defects and other
9 reproductive harm. (*Cal. Health & Safety Code §25249.6.*)

10 21. Proposition 65 states, “No person in the course of doing business shall knowingly
11 and intentionally expose any individual to a chemical known to the state to cause cancer or
12 reproductive toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)

13 22. On July 1, 1987, the State of California listed benz[a]anthracene, benzo[a]pyrene,
14 benzo[b]fluoranthene, and benzo[k]fluoranthene as chemicals known to the state to cause cancer.

15 23. On January 1, 1988, the State of California listed indeno[1,2,3-cd]pyrene as a
16 chemical known to the state to cause cancer.

17 24. The PAHs became subject to the Proposition 65 warning requirement one year after
18 being listed as chemicals known to the State of California to cause cancer. (*Cal. Health & Safety*
19 *Code §25249.10(b).*)

20 25. On November 19, 2007, a 60-Day Notice of Violation, together with the requisite
21 certificate of merit, was issued to LEGOLAND and various public enforcement agencies stating
22 that as a result of LEGOLAND’S sale of the Flame Cooked Ground Beef Products, purchasers and
23 users in the State of California were being exposed to PAHs through ingestion resulting from the
24 reasonably foreseeable use of the Flame Cooked Ground Beef Products without first providing
25 purchasers and/or consumers of these burgers with a “clear and reasonable warning” regarding such
26 toxic exposures.

27 26. LEGOLAND has engaged in the manufacture, distribution and/or offering of the
28 Flame Cooked Ground Beef Products containing PAHs for sale or use in violation of California

1 Health & Safety Code §25249.6. Moreover, LEGOLAND'S manufacture, distribution and/or
2 offering for sale or use of the Flame Cooked Ground Beef Products containing PAHs in violation of
3 California Health & Safety Code §25249.6 has continued to occur beyond its receipt of plaintiff's
4 60-Day Notice of Violation. Plaintiff further alleges and believes that such violations will continue
5 to occur into the future.

6 27. After receipt of the claims asserted in the 60-Day Notice of Violation, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
8 of action against LEGOLAND under Proposition 65.

9 28. LEGOLAND has allowed fat to drip onto the hot flame-broiler, thereby causing
10 PAH-contaminated smoke to contact the Flame Cooked Ground Beef Products, and/or has allowed
11 flames to come into contact with fat on the surface of the Flame Cooked Ground Beef Products,
12 thereby creating PAHs which collected in or on these products.

13 29. LEGOLAND has failed to utilize sufficient means, such as reducing the amount of
14 contaminated smoke coming into contact with the Flame Cooked Ground Beef Products, to
15 decrease the amount of PAHs in or on the Flame Cooked Ground Beef Products, so as to exempt
16 LEGOLAND from having to provide a clear and reasonable warning regarding the risk of cancer
17 associated with exposure to PAHs.

18 30. PAHs have been present in and/or on the Flame Cooked Ground Beef Products in
19 such a way as to expose individuals to PAHs through ingestion during the reasonably foreseeable
20 use of the Flame Cooked Ground Beef Products.

21 31. The normal and reasonably foreseeable use of the Flame Cooked Ground Beef
22 Products caused and continues to cause consumer exposures to PAHs, as consumer exposure is
23 defined by 22 CCR §12601(b).

24 32. LEGOLAND knew that the normal and reasonably foreseeable use of the Flame
25 Cooked Ground Beef Products would expose individuals to PAHs through ingestion.

26 33. LEGOLAND intended that such exposures to PAHs from the reasonably foreseeable
27 use of the Flame Cooked Ground Beef Products would occur by its preparation, cooking and/or
28 offering for sale or use of Flame Cooked Ground Beef Products to individuals in the State of

1 California, as part of its normal course of business.

2 34. The Flame Cooked Ground Beef Products manufactured, distributed, and/or offered
3 for sale or use in California by LEGOLAND contained PAHs in levels requiring a warning, in that
4 PAHs are found in quantities above the allowable state limits where such limits have been set
5 pursuant to Health & Safety Code §25249.10(c), or in detectable quantities requiring a warning
6 pursuant to Health & Safety Code §25249.6 in the cases of listed chemicals without limits set
7 pursuant to §25249.10(c).

8 35. LEGOLAND failed to provide a “clear and reasonable warning” to consumers,
9 employees or other individuals in the State of California who were or who could become exposed to
10 PAHs through ingestion during the reasonably foreseeable use of the Flame Cooked Ground Beef
11 Products, as is required by law.

12 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
13 directly by California voters, those individuals who have been and continue to be exposed to PAHs
14 through ingestion resulting from the reasonably foreseeable use of the Flame Cooked Ground Beef
15 Products sold by LEGOLAND without a “clear and reasonable warning” have suffered, and
16 continue to suffer, irreparable harm, for which they have no plain, speedy or adequate remedy at
17 law.

18 37. As a consequence of the above-described acts, LEGOLAND is liable for a maximum
19 civil penalty of \$2,500 per day for each violation pursuant to California Health & Safety Code
20 §25249.7(b).

21 38. As a consequence of the above-described acts, California Health & Safety Code
22 §25249.7(a) specifically authorizes the Court to grant injunctive relief against LEGOLAND.

23 **PRAYER FOR RELIEF**

24 Wherefore, plaintiff prays for judgment against defendants as follows:

25 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
26 civil penalties against defendants, in the amount of \$2,500 per day for each violation alleged herein;

27 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
28 preliminarily and permanently enjoin defendants from manufacturing, distributing or offering for

1 sale or use the Flame Cooked Ground Beef Products in California, without providing "clear and
2 reasonable warnings," as defined by 22 CCR §12601, as to the harms associated with exposure to
3 certain toxins;

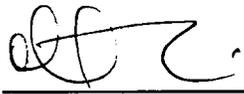
4 3. That the Court grant plaintiff her reasonable attorney's fees and costs of suit; and

5 4. That the Court grant such other and further relief as may be just and proper.

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Dated: March 24, 2008

Respectfully submitted,
HIRST & CHANLER LLP



David Lavine
Attorneys for Plaintiff
WHITNEY R. LEEMAN, Ph.D.